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(Nelson)

SUPREME COURT OF THE UNITED STATES.

No. ~~286~~. 199, 106.

WINTHROP W. GILMAN, COMPLAINANT AND APPELLANT,

vs.

817

THE CITY OF SHEBOYGAN, AND FRANCIS GEELE, TREASURER OF THE CITY OF SHEBOYGAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

CCLXXXVI. GIDEON, Printer, 511 Ninth Street, D. C.

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No. 286.

WINTHROP W. GILMAN, COMPLAINANT AND APPELLANT,

vs.

THE CITY OF SHEBOYGAN, AND FRANCIS GEELE,
TREASURER OF THE CITY OF SHEBOYGAN.

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[REC. CCLXXXVI, D. T. 1860.]

DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE DISTRICT OF WISCONSIN.

UNITED STATES OF AMERICA, DISTRICT OF WISCONSIN. } *ss.*

At a special term of the District Court of the United States of America, for the District of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said District of Wisconsin, on the first Monday (being the first day) of October, A. D. 1860: present, the Honorable Andrew G. Miller, Judge of said Court, presiding; J. H. Lewis, Marshal; John M. Miller, Clerk.

Among other the following proceedings were had, to wit:

WINTHROP W. GILMAN
vs.
THE CITY OF SHEBOYGAN AND FRANCIS GEELE, TREASURER OF THE CITY OF SHEBOYGAN.

Be it remembered that heretofore, to wit, on the nineteenth day of December, A. D. 1859, came Winthrop W. Gilman, by his solicitors, Messrs. Finches, Lynde & Miller, and filed his bill against the City of Sheboygan and Francis Geele, Treasurer of the City of Sheboygan, as follows:

United States District Court, District of Wisconsin. } In Equity.

To the Judge of the District Court of the United States for the District of Wisconsin, complaining, showeth:

Your orator, Winthrop W. Gilman, of the city of New York, and a citizen and resident of the State of New York, brings this his bill against the city of Sheboygan, a municipal corporation in the State of Wisconsin, and existing under and by virtue of the laws of the State of Wisconsin, and Francis Geele, a citizen and resident of the city of Sheboygan, State of Wisconsin, and Treasurer of the city of Sheboygan; and thereupon your orator complaining, shows: that he is and was for a long time prior to the year 1857 seized in fee of all the following described pieces or parcels of land, situated within the incorporated limits of the city of Sheboygan, in said State of Wisconsin, to wit:

No. of Certificate.	Ward.	Block.	Lot.	To whom sold.	Am't.	When sold and date of certificate.
24	1st	7	1	City	$2 35	December 21, 1857.
29	"	7	6	"	2 70	"
40	"	10	1	"	3 05	"
41	"	10	2	"	2 87	"
42	"	10	3	"	2 87	"
43	"	10	4	"	2 87	"
44	"	10	5	"	2 87	"
45	"	10	6	"	3 05	"
52	"	12	1	"	3 05	"
53	"	12	2	"	2 53	"
54	"	12	3	"	2 53	"
55	"	12	4	"	2 53	"
56	"	12	5	"	2 53	"
57	"	12	6	"	3 05	"
140	"	23	1	"	2 87	"
141	"	23	2	"	2 44	"
142	"	23	3	"	2 44	"
143	"	23	4	"	2 44	"
144	"	23	5	"	2 44	"
145	"	23	6	"	3 05	"
146	"	23	7	"	3 05	"
147	"	23	8	"	2 70	"
148	"	23	9	"	2 70	"
149	"	23	10	"	2 70	"
150	"	23	11	"	2 70	"
151	"	23	12	"	3 05	"
161	"	25	7	"	50 83	"
162	"	25	8	"	3 31	"
201	"	30	4	"	3 40	"
202	"	30	5	"	3 40	"
203	"	30	6	"	3 75	"
229	"	33	1	"	3 05	"
230	"	33	2	"	2 70	"
231	"	33	3	"	2 70	"
232	"	33	4	"	2 70	"
233	"	33	5	"	2 70	"
234	"	33	6	"	3 05	"
235	"	33	7	"	3 05	"
236	"	33	8	"	2 70	"
237	"	33	9	"	2 70	"
238	"	33	10	"	2 70	"
239	"	33	11	"	2 70	"
240	"	33	12	"	3 05	"
250	"	35	3	"	2 44	"
251	"	35	4	"	2 70	"
252	"	35	5	"	2 70	"
253	"	35	6	"	3 05	"
254	"	35	7	"	3 05	"
255	"	35	8	"	2 70	"
256	"	35	9	"	2 44	"

No. of Certificate.	Ward.	Block.	Lot.	To whom sold.	Am't.	When sold and date of certificate.
301	1st	45	10	City	18 12	December 21, 1857.
302	"	45	11	"	18 12	"
303	"	45	12	"	19 00	"
316	"	47	1	"	4 62	"
317	"	47	2	"	4 19	"
318	"	47	3	"	4 19	"
319	"	47	4	"	4 19	"
320	"	47	5	"	4 19	"
321	"	47	6	"	30 37	"
369	"	53	1	"	2 44	"
370	"	53	2	"	2 00	"
371	"	53	3	"	2 00	"
372	"	53	4	"	2 00	"
373	"	53	5	"	2 00	"
374	"	53	6	"	2 44	"
375	"	53	7	"	2 87	"
376	"	53	8	"	2 44	"
377	"	53	9	"	2 44	"
378	"	53	10	"	2 44	"
379	"	53	11	"	2 44	"
380	"	53	12	"	2 87	"
381	"	54	1	"	2 87	"
382	"	54	2	"	2 44	"
383	"	54	3	"	2 44	"
384	"	54	4	"	2 44	"
385	"	54	5	"	2 44	"
386	"	54	6	"	2 87	"
387	"	54	7	"	2 44	"
388	"	54	8	"	2 00	"
389	"	54	9	"	2 00	"
390	"	54	10	"	2 00	"
391	"	54	11	"	2 00	"
392	"	54	12	"	2 44	"
414	"	58	7	"	3 75	"
415	"	58	8	"	3 31	"
416	"	58	9	"	3 31	"
417	"	58	10	"	3 31	"
418	"	58	11	"	3 31	"
419	"	58	12	"	3 75	"
459	"	64	03	"	5 06	"
460	"	64	04	"	5 06	"
477	"	67	3	"	3 58	"
478	"	67	4	"	3 58	"
479	"	67	5	"	3 58	"
480	"	67	6	"	3 92	"
481	"	67	7	"	4 19	"
482	"	67	8	"	3 75	"
483	"	67	9	"	3 75	"
484	"	67	10	"	3 75	"
485	"	67	11	"	3 75	"

No. of Certificate.	Ward.	Block.	Lot.	To whom sold.	Am't.	When sold and date of certificate.
486	1st	67	12	City	4 19	December 21, 1857.
493	"	68	7	"	4 19	"
494	"	68	8	"	3 31	"
495	"	68	9	"	3 31	"
496	"	68	10	"	3 31	"
497	"	68	11	"	3 31	"
498	"	68	12	"	3 75	"
519	"	73	1	"	5 94	"
520	"	73	2	"	5 06	"
521	"	73	3	"	5 06	"
522	"	73	4	"	5 06	"
523	"	73	5	"	5 94	"
524	"	73	6	"	6 55	"
549	"	76	4	"	7 69	"
550	"	76	5	"	8 12	"
551	"	76	6	"	9 00	"
552	"	76	7	"	12 06	"
553	"	76	8	"	10 31	"
554	"	76	9	"	10 31	"
563	"	77	8	"	9 44	"
564	"	77	10	"	8 56	"
600	"	81	09	"	2 70	"
601	"	81	10	"	2 70	"
602	"	81	11	"	2 70	"
603	"	81	12	"	3 05	"
604	"	82	1	"	2 87	"
605	"	82	2	"	2 44	"
606	"	82	3	"	2 44	"
607	"	82	4	"	2 44	"
608	"	82	5	"	2 44	"
609	"	82	6	"	2 87	"
636	"	84	9	"	2 44	"
637	"	84	10	"	2 44	"
638	"	84	11	"	2 44	"
639	"	84	12	"	2 87	"
672	"	87	9	"	2 44	"
673	"	87	10	"	2 44	"
674	"	87	11	"	2 44	"
675	"	87	12	"	2 87	"
676	"	88	1	"	2 87	"
682	"	88	7	"	2 87	"
685	"	88	10	"	1 56	"
686	"	89	1	"	3 31	"
689	"	89	4	"	2 87	"
702	"	91	6	"	3 50	December 22, 1857.
728	"	94	6	"	4 19	"
729	"	94	7	"	4 19	"
730	"	94	8	"	3 75	"
731	"	94	9	"	3 75	"
734	"	95	1	"	9 87	"

No. of Certificate.	Ward.	Block.	Lot.	To whom sold.	Am't.	When sold and date of certificate.
735	1st	95	2	City	9 00	December 22, 1857.
742	"	96	2	"	7 25	"
743	"	96	3	"	7 25	"
758	"	98	4	"	3 31	"
801	"	103	6	"	10 75	"
813	"	104	7	"	12 94	"
823	"	105	9	"	13 37	"
824	"	105	10	"	12 50	"
826	"	105	12	"	12 50	"
832	"	106	4	"	12 94	"
839	"	107	1	"	7 25	"
840	"	107	2	"	5 50	"
841	"	107	5	"	3 31	"
842	"	107	6	"	3 75	"
848	"	107	12	"	9 44	"
862	"	109	4	"	3 31	"
863	"	109	5	"	3 31	"
935	"	110	7	"	2 44	"
936	"	110	8	"	2 87	"
1786	"	111	14	"	4 75	"
1788	"	111	16	"	4 75	"
1791	"	111	19	"	4 75	"
1793	"	112	2	"	4 75	"
942	"	113	1	"	2 00	"
943	"	113	2	"	3 31	"
947	"	113	6	"	3 31	"
948	"	113	7	"	2 44	"
952	"	113	11	"	2 87	"
881	"	115	1	"	2 44	"
882	"	115	2	"	2 00	"
887	"	115	7	"	2 44	"
890	"	115	11	"	2 00	"
891	"	115	12	"	2 44	"
898	"	117	1	"	2 44	"
899	"	117	2	"	2 00	"
902	"	117	5	"	2 00	"
903	"	117	6	"	2 44	"
906	"	118	3	"	2 00	"
1660	"	118	7	"	2 50	"
1798	3d	119	4	"	2 05	"
1800	"	119	6	"	2 95	"
1801	"	119	7	"	2 95	"
1802	"	119	8	"	3 40	"
1829	"	122	10	"	4 75	"
1832	"	122	13	"	4 30	"
918	1st	125	3	"	3 31	"
919	"	125	4	"	3 31	"
885½	"	126	1	"	8 12	"
886½	"	126	2	"	5 06	"
1110	2d	126	11	"	57 43	"

No. of Certificate.	Ward.	Block.	Lot.	To whom sold.	Am't.	When sold and date of certificate.
1111	2d	126	12	City	$50 34	December 22, 1857.
895½	1st	128	1	"	14 25	"
1122	2d.	128	12	"	19 25	"
1130	"	130	1	"	235 81	"
1132	"	130	3	"	17 35	"
1137	"	130	7	"	26 38	"
1151	"	131	9	"	148 92	"
1153	"	131	12	"	27 25	"
1154	"	132	1	"	19 84	"
1835	3d	134	1	"	7 00	December 23, 1857.
1836	"	134	2	"	9 25	"
1843	"	135	7	"	5 65	"
1848	"	136	1	"	5 65	"
1854	"	137	1	"	4 30	"
1855	"	137	2	"	3 85	"
1858	"	137	6	"	2 95	"
1661	"	138	1	"	3 40	"
1664	"	138	6	"	3 40	"
1665	"	139	1	"	2 50	"
1666	"	139	2	"	2 05	"
1667	"	139	3	"	2 05	"
1669	"	139	5	"	2 05	"
1670	"	139	6	"	2 50	"
1673	"	139	10	"	2 05	"
1674	"	139	11	"	2 05	"
1675	"	139	12	"	2 50	"
1691	"	141	4	"	2 05	"
1692	"	141	5	"	2 05	"
1693	"	141	6	"	2 50	"
1694	"	141	7	"	2 50	"
1695	"	141	8	"	2 05	"
1696	"	141	9	"	2 05	"
1713	"	143	2	"	2 95	"
1864	"	144	4	"	2 50	"
1865	"	144	5	"	2 50	"
1869	"	145	1	"	4 75	"
1870	"	145	2	"	4 30	"
1871	"	145	3	"	4 30	"
1881	"	146	11	"	4 75	"
1882	"	146	12	"	5 20	"
1883	"	147	1	"	2 50	"
1884	"	147	2	"	4 75	"
1895	"	148	7	"	7 00	"
1901	"	148	13	"	7 00	"
1179	2d	150	1	"	23 02	December 22, 1857
1184	"	150	8	"	89 80	"
1195	"	152	1	"	25 90	"
1196	"	152	2	"	17 35	"
1207	"	153 N ½	1	"	34 45	"
1905	3d	157	5	"	5 65	December 23, 1857.

No. of Certificate.	Ward.	Block.	Lot.	To whom sold.	Am't.	When sold and date of certificate.
1906	3d	157	6	City	5 65	December 23, 1857.
1913	"	159	1	"	6 10	"
1914	"	159	2	"	5 65	"
1915	"	159	3	"	5 65	"
1919	"	159	7	"	6 55	"
1920	"	159	8	"	6 10	"
1921	"	159	9	"	6 10	"
1922	"	159	10	"	6 10	"
1925	"	160	1	"	6 10	"
1927	"	160	6	"	6 10	"
1931	"	161	1	"	5 65	"
1934	"	161	4	"	5 20	"
1935	"	161	5	"	4 75	"
1936	"	161	6	"	6 55	"
1734	"	163	17	"	2 05	"
1735	"	163	18	"	2 05	"
1738	"	163	21	"	2 05	"
1743	"	163	26	"	2 05	"
1745	"	163	28	"	2 05	"
1748	"	164	4	"	2 05	"
1749	"	164	5	"	2 05	"
1750	"	164	6	"	2 50	"
1752	"	164	8	"	2 05	"
1754	"	164	10	"	2 05	"
1755	"	165	1	"	2 50	"
1756	"	165	2	"	2 05	"
1759	"	165	5	"	2 05	"
1760	"	165	6	"	2 50	"
1761	"	165	7	"	2 50	"
1762	"	165	8	"	2 05	"
1765	"	165	11	"	2 05	"
1766	"	165	12	"	2 50	"
1975	"	171	1	"	4 75	"
1976	"	171	2	"	4 30	"
1979	"	171	5	"	4 30	"
1980	"	171	6	"	4 75	"
1986	"	171	12	"	4 75	"
1997	"	173	1	"	7 00	"
1998	"	173	2	"	6 55	"
2000	"	173	4	"	7 00	"
2003	"	173	7	"	7 00	"
1268	2d	175	11	"	24 00	December 22, 1857.
1279	"	176	6	"	32 07	"
1327	"	178 E $\frac{1}{3}$	5	"	15 92	"
1328	"	178 W $\frac{1}{2}$ E $\frac{2}{3}$	5	"	19 25	"
1329	"	178 W $\frac{1}{3}$	5	"	16 88	"
1336	"	178	8	"	19 25	"
1339	"	178	11	"	17 35	"
1364	"	181	10	"	9 75	December 23, 1857.
1371	"	182	7	"	21 62	"

No. of Certificate.	Ward.	Block.	Lot.	To whom sold.	Am't.	When sold and date of certificate.
1375	2d	184	2	City	8 80	December 23, 1857.
2009	3d	185	3	"	6 55	"
2014	"	185	8	"	6 55	"
2015	"	185	9	"	2 95	"
2028	"	188	1	"	2 95	"
2039	"	189	1	"	5 20	"
2040	"	189	2	"	4 75	"
2041	"	189	3	"	4 75	"
2042	"	189	4	"	4 75	"
2043	"	189	5	"	4 75	"
2044	"	189	6	"	5 20	"
2057	"	190	11	"	4 75	"
2058	"	190	12	"	5 20	"
2073	"	195	4	"	2 50	"
2074	"	195	5	"	2 50	"
2084	"	195	15	"	2 50	"
2101	"	197	5	"	2 95	"
2102	"	197	6	"	3 40	"
2103	"	197	7	"	3 40	"
2104	"	197	8	"	2 95	"
2117	"	198	11	"	4 30	"
2118	"	198	12	"	5 65	"
2125	"	199	9	"	2 05	"
2128	"	199	12	"	2 50	"
2129	"	200	1	"	2 95	"
2130	"	200	2	"	2 50	"
2131	"	200	3	"	2 50	"
2132	"	200	4	"	2 50	"
2133	"	200	5	"	2 50	"
2134	"	200	6	"	2 95	"
2144	"	201	9	"	2 95	"
2145	"	201	10	"	2 50	"
2146	"	201	11	"	2 50	"
2147	"	201	12	"	1 60	"
2156	"	202	9	"	2 50	"
1395	2d	204	12	"	19 25	"
1402	"	205	7	"	19 25	"
1403	"	205	8	"	11 65	"
2182	3d	209	5	"	13 75	"
1415	2d	210	1	"	2 15	"
1418	"	210	4	"	2 47	"
1427	"	211	5	"	9 75	"
1428	"	211	6	"	13 55	"
1434	"	211	12	"	9 75	"
1442	"	212	12	"	13 55	"
1446	"	213	6	"	9 75	"
1447	"	213	7	"	9 75	"
2186	3d	214	1	"	8 35	"
2187	"	214	2	"	7 45	"
2188	"	214	5	"	7 45	"

No. of Certificate.	Ward.	Block.	Lot.	To whom sold.	Am't.	When sold and date of certificate.
2209	3d	216	7	City	3 85	December 23, 1857
2210	"	216	8	"	3 40	"
2211	"	216	9	"	3 40	"
2217	"	217	4	"	3 13	"
2218	"	217	5	"	3 13	"
2219	"	217	6	"	3 49	"
2220	"	217	7	"	3 49	"
2221	"	217	8	"	3 13	"
2222	"	217	9	"	3 13	"
2231	"	218	6	"	5 20	"
2243	"	219	10	"	3 85	"
2244	"	219	11	"	3 85	"
2245	"	219	12	"	4 30	"
2258	"	221	1	"	3 49	"
2259	"	221	2	"	3 13	"
2260	"	221	3	"	3 13	"
2261	"	221	4	"	3 13	"
2262	"	221	5	"	3 13	"
2263	"	221	6	"	3 41	"
2270	"	222	1	"	3 13	"
2271	"	222	2	"	2 77	"
2272	"	222	3	"	2 77	"
2279	"	222	10	"	2 77	"
2280	"	222	11	"	2 77	"
2281	"	222	12	"	3 13	"
2321	"	227	1	"	3 85	"
2322	"	227	2	"	3 40	"
2324	"	227	3	"	3 40	"
2323	"	227	4	"	3 40	"
2324½	"	227	5	"	3 40	"
2325	"	227	6	"	3 85	"
2329	"	227	10	"	3 40	"
2330	"	227	11	"	3 40	"
2331	"	227	12	"	3 85	"
2344	"	229	1	"	4 75	"
2345	"	229	2	"	3 85	"
2346	"	229	3	"	2 95	"
1453	2d	233	3	"	17 35	"
2383	3d	235	8	"	11 05	"
2385	"	235	10	"	7 45	"
2386	"	235	11	"	2 05	"
2389	"	236	3	"	7 45	"
2391	"	237	5	"	3 85	"
2398	"	238	6	"	10 15	"
2414	"	241	1	"	18 65	"
2417	"	241	5	"	16 85	"
2423	"	243	1	"	6 55	"
2431	"	243 S ½	9	"	6 30	"
2437	"	244 N ½	8	"	2 95	"
2436	"	244 S ½	8	"	10 95	"

No. of Certificate.	Ward.	Block.	Lot.	To whom sold.	Am't.	When sold and date of certificate.
2535	3d.	250 S ½	7	City	4 95	December 23, 1857.
2537	"	250 S ½	8	"	4 05	"
2539	"	250 S ½	9	"	4 05	"
2541	"	250 S ½	10	"	4 05	"
2542	"	250 N ½	10	"	1 60	"
2543	"	250 S ½	11	"	5 40	"
2544	"	250 N ½	11	"	1 60	"
2545	"	250 S ½	12	"	4 95	"
2546	"	250 N ½	12	"	2 05	"
2564	"	252	1	"	7 85	December 24, 1857.
2565	"	252	2	"	7 40	"
2566	"	252	3	"	7 40	"
2567	"	252	4	"	7 40	"
2568	"	252	5	"	7 40	"
2569	"	252	6	"	7 85	"
2570	"	252	7	"	3 49	"
2571	"	252	8	"	3 13	"
2572	"	252	9	"	3 13	"
2573	"	252	10	"	3 13	"
2574	"	252	11	"	3 13	"
2575	"	252	12	"	3 49	"
2598	"	255	1	"	34 35	"
2599	"	255	2	"	20 30	"
2600	"	255	3	"	9 70	"
2602	"	255	5	"	8 30	"
2603	"	255	6	"	8 75	"
2604	"	255	8	"	2 50	"
2605	"	255	9	"	2 50	"
2606	"	255	10	"	2 50	"
2607	"	255	11	"	2 50	"
2608	"	255	12	"	2 95	"
2633	"	258	4	"	22 60	"
2634	"	258	5	"	22 60	"
2635	"	258	6	"	23 05	"
2636	"	258	7	"	3 13	"
2637	"	258	8	"	2 77	"
2638	"	258	9	"	2 77	"
2639	"	258	10	"	2 77	"
2640	"	258	11	"	2 77	"
2641	"	258	12	"	3 13	"
2666	"	261	2	"	15 95	"
2667	"	261	3	"	15 95	"
2668	"	261	4	"	15 95	"
2670	"	261	6	"	16 85	"
2721	"	268	7	"	3 40	"
2722	"	268	8	"	2 95	"
2723	"	268	9	"	2 95	"
2724	"	268	10	"	2 95	"
2725	"	268	11	"	2 95	"
2726	"	268	12	"	3 40	"

No. of Certificate.	Ward.	Block.	Lot.	To whom sold.	Am't.	When sold and date of certificate.
2731	3d	269	7	City	2 95	December 24, 1857.
2732	"	269	8	"	2 50	"
2733	"	269	9	"	2 50	"
2735	"	269	11	"	2 50	"
2736	"	269	12	"	2 95	"
2749	"	271	1	"	2 95	"
2750	"	271	2	"	2 50	"
2751	"	271	3	"	2 50	"
2752	"	271	4	"	2 50	"
2753	"	271	5	"	2 50	"
2754	"	271	6	"	2 95	"
2759	"	271	10	"	2 50	"
2760	"	271	11	"	2 50	"
2761	"	271	12	"	2 95	"
2820	"	277	1	"	3 40	"
2820½	"	277	2	"	2 95	"
2821	"	277	3	"	2 95	"
2822	"	277	4	"	2 95	"
2823	"	277	5	"	2 95	"
2824	"	277	6	"	3 40	"
2825	"	277	7	"	3 40	"
2826	"	277	8	"	2 95	"
2827	"	277	9	"	2 95	"
2828	"	277	10	"	2 95	"
2829	"	277	11	"	2 95	"
2830	"	277	12	"	3 40	"
2846	"	279	4	"	2 77	"
2847	"	279	5	"	2 77	"
2848	"	279	6	"	3 13	"
2849	"	279	7	"	3 13	"
2850	"	279	8	"	2 77	"
2851	"	279	9	"	2 77	"
2852	"	279	10	"	2 77	"
2853	"	279	11	"	2 77	"
2854	"	279	12	"	3 13	"
2867	"	281	1	"	3 13	December 26, 1857.
2868	"	281	2	"	2 77	"
2869	"	281	3	"	2 77	"
2872	"	281	6	"	3 13	"
2873	"	281	7	"	3 13	"
2874	"	281	8	"	2 77	"
2875	"	281	9	"	2 77	"
2876	"	281	10	"	2 77	"
2877	"	281	11	"	2 77	"
2878	"	281	12	"	3 13	"
2915	"	285	1	"	2 50	December 28, 1857.
2916	"	285	2	"	2 05	"
2917	"	285	3	"	2 05	"
2918	"	285	4	"	2 05	"
2919	"	285	5	"	2 05	"

No. of Certificate.	Ward.	Block.	Lot.	To whom sold.	Am't.	When sold and date of certificate.
2920	3d	285	6	City	2 50	December 28, 1857
2921	"	285	7	"	2 50	"
2922	"	285	8	"	2 05	"
2923	"	285	9	"	2 05	"
2924	"	285	10	"	2 05	"
2925	"	285	11	"	2 05	"
2926	"	285	12	"	2 50	"
2927	"	286	1	"	2 50	"
2930	"	286	3	"	2 05	"
2932	"	286	5	"	2 05	"
2934	"	287	1	"	2 95	"
2935	"	287	2	"	2 50	"
2936	"	287	3	"	2 50	"
2937	"	287	4	"	2 50	"
2938	"	287	5	"	2 50	"
2940	"	287	6	"	2 95	"
2978	"	295	2	"	2 05	"
2979	"	295	3	"	2 05	"
2980	"	297	1	"	2 77	"
2981	"	297	2	"	2 50	"
2982	"	297	3	"	2 50	"
2983	"	297	4	"	2 50	"
2984	"	297	5	"	2 50	"
2985	"	297	6	"	2 77	"
3003	"	301	1	"	2 50	"
3004	"	301	2	"	2 05	"
3005	"	301	3	"	2 05	"
3006	"	301	4	"	2 05	"
3007	"	301	5	"	2 05	"
3008	"	301	6	"	2 50	"
905½	1st	305	4	"	2 70	"
915½	"	307	3, 4	"	31 31	December 22, 1857.
1461	2d.	307	7	"	19 25	December 23, 1857.
1466	"	308 N ½	1	"	9 75	"
1467	"	308 S ½	1	"	8 80	"
1468	"	308	2	"	16 40	"
1471	"	308	7	"	24 00	"
1476	"	309	3	"	17 35	"
1477	"	309	4	"	21 15	"
1484	"	309	11	"	34 45	"
1485	"	309	12	"	33 50	"
1511	"	311	3	"	18 78	"
1514	"	311⅗	5	"	62 00	"
1531	"	313	13	"	28 75	"
1535	"	313	17	"	28 75	"
1112	2d.	127 N ½	7, 8	"	50 91	"
1113	"	127 S ½	7, 8	"	50 43	"

3130, 3d Ward, West one-half of southeast one-quarter of Sec. 27, Town 15, Range 23. 80 acres, $225 25. Sold Dec. 29, 1857, and certificate given.

3131, " Undivided half of the east one-half of southwest quarter of Sec. 27, T. 15, R. 23. 80 acres, $112 62½. Sold Dec. 29, 1857, and certificate given.

3133, " Lot 1 in Sec. 27, undivided except two strips of land running east and west, one owned by Sheboygan and Mississippi R. R. Co., the other by Sheboygan and Sheboygan Falls Plank Road Company, being about 47 acres, $130 75. Sold Dec. 29, 1857, and certificate given.

3062, 1st Ward, A piece of land bounded as follows: commencing at a point in the north line of Lot No. 4, Sec. 14, $28\frac{86}{100}$ chains east of northwest corner of said lot; thence running south to the shore of Lake Michigan; thence following the shore of said lake in a northerly direction to the north line of Lot No. 4; thence west on the north line of said Lot 4 to the place of beginning; except therefrom 2½ acres belonging to United States government; being $12\frac{64}{100}$ acres, $35 25. Sold Dec. 29, 1857, and certificate given.

3118, 3d Ward, The north $23\frac{34}{100}$ acres of west one-half of southwest one-quarter of Sec. 22, T. 15, R. 23. $40 75. Sold Dec. 29, 1857, and certificate given.

3116, 1st formerly, 4th Ward now, a piece of land bounded as follows: commencing at a point $4\frac{59}{100}$ chains west of the common centre of Sec. 22, T. 15, R. 23; thence west $15\frac{41}{100}$ chains; thence north $8\frac{4}{100}$ chains to the Sheboygan and Fon-du-Lack Plank Road; thence northeast along said road $16\frac{47}{100}$ chains; thence south $14\frac{5}{100}$ chains to the place of beginning, $35 25. Sold Dec. 29, 1857, and certificate given.

3139, 3d Ward, Undivided two-fifths of piece of land of southeast fraction, north of a piece of southeast of said fraction, $4\frac{86}{100}$ chains in width, extending from river to lake in Sec. 23, T. 15, R. 23. $184 67½. Sold 29 Dec., 1857, and certificate given.

And your orator further shows, that heretofore, to wit, on or about the seventeenth day of January, A. D. 1854, the Legislature of the State of Wisconsin passed an Act entitled "An Act

to authorize the city of Sheboygan to aid in the construction of a Railroad;" and which said Act was approved on the said seventeenth day of January, A. D. 1854; by which said Act the Commissioners named in said Act were authorized to borrow one hundred thousand dollars, upon the credit of the city of Sheboygan, for twenty years or less, in such sums as they may deem proper, at a rate of interest not exceeding ten per centum per annum, payable annually in the city of New York; for the purpose of investing the same in the capital stock of a railroad company, authorized to construct a railroad from the city of Sheboygan westwardly by the way of Fon-du-Lack to the Mississippi river, and to issue therefrom the bonds of said city of Sheboygan as therein provided.

And it was further provided in and by said Act that the said city of Sheboygan should annually levy a tax upon all the taxable property of said city sufficient to pay the interest upon said bonds, after deducting the dividends received by said city on shares of stock of said Company, owned and held by said city.

And your orator further shows, that by said Act of the Legislature of the State of Wisconsin, said city of Sheboygan, or the city council of said city of Sheboygan, should have the power to submit the question of raising a further sum of one hundred thousand dollars upon the said credit of said city, in the like manner and form as before provided for raising the first one hundred thousand, as by reference to said Act will more fully and particularly appear.

And your orator further shows, that by an Act of the Legislature of the State of Wisconsin, entitled "An Act to authorize the city of Sheboygan to aid in the construction of the Sheboygan and Mississippi Railroad," approved March 28th, 1856, the common council of said city of Sheboygan was authorized to subscribe, in behalf of said city of Sheboygan, to the capital stock of said railroad company to the amount of fifty thousand dollars, with power, however, to increase said subscription to said stock from time to time, until the aggregate amount of such subscriptions should equal the sum of one hundred thousand dollars; and in and by said act it was also provided that to provide for the payment of instalments on the stock subscribed, the said common council should levy annually, after such subscription shall have been made, a tax on all the real estate within the incorporated limits of said city, not exceeding the sum of twenty-five thousand dollars in any one year, until the whole amount of such subscription should be paid, as by reference to said Act will more fully and particularly appear.

And your orator further alleges, upon information and belief, that under and in pursuance of said loans, the said city of Sheboygan has issued its bonds to the amount of two hundred thousand dollars, payable as in and by said Acts provided; and which

said bonds, as your orator is informed and believes, were issued under the said Act of 1854 and 1856, and that the schedule hereto attached, marked "A.," is a certified copy of the report of the issuing of said bonds, and which your orator makes part of his bill.

And your orator further alleges, that in the year 1857, the Legislature of the State of Wisconsin passed an Act, in the words and figures, following:

"An Act to amend an Act to incorporate the city of Sheboygan, and the several Acts amendatory thereof.

"The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

"Section 1. All taxes hereafter levied by the Common Council of the city of Sheboygan for the (amount) (payment) of principal or interest of any bonds issued or to be issued by said city to aid in the construction of any railroad, plank road, or for the improvement of the harbor at the mouth of the Sheboygan river, shall be levied by said Council on the real estate of said city exclusively.

"Sec. 2. All Acts or parts of Acts that conflict with the provisions of this Act are hereby repealed.

"Sec. 3. This Act shall take effect and be in force from and after its passage.

"Approved March 7, 1857."

And your orator further alleges, upon information and belief, that in the year 1857 the said the Common Council of the city of Sheboygan, acting under and in pursuance of the provisions of said last Act, did adopt and pass a resolution, levying the taxes for that year, substantially as follows:

"On motion of A. Patt, Resolved, That the clerk be directed to make out the tax roll for the year 1857, as follows: for interest on harbor loans and railroad and plank road bonds, there be assessed on the real estate in this city, according to the confirmed tax-rolls, six cents on the dollar; for supporting city and county poor, and interest on the poor farm bonds, there be assessed on all the taxable property within the city limits one per cent.; for general purposes one per cent.; for ward purposes: 1st ward, three-fourths per cent.; 2d ward, one and one-half per cent.; for 3d ward, one per cent."

And your orator further alleges, upon information and belief, that said Common Council of the city of Sheboygan did, in pursuance of said law and said resolution, levy a tax upon all the real estate within the limits of said city of Sheboygan—six cents on the dollar for the said harbor loans, railroad and plank road bonds; and did not levy said sum or any part thereof upon any other kind of property within said city of Sheboygan, for the said harbor loans, railroad and plank road bonds, but levied the tax for the payment of the interest upon those specific objects

entirely and solely out of the real estate within said city limits; and that the real estate above stated and set forth in this complaint was included in and was taxed at the rate aforesaid, and for the purpose aforesaid.

And your orator further alleges, upon information and belief, that at the time said tax was levied, there was personal property owned by citizens and residents of the said city of Sheboygan to the amount of the value of at least three hundred or four hundred thousand dollars, which was liable to taxation, and upon which no tax was levied for any of the said purposes, or either of them, for the year 1857.

And your orator alleges, upon information and belief, that no tax was levied upon any portion of any of the personal property within the limits of said city of Sheboygan, to pay any portion or part of the indebtedness of said city of Sheboygan upon said harbor loans, railroads, or plank roads for the year 1857.

And your orator insists and alleges that the said tax of 1857 so levied is unjust, oppressive, illegal, and absolutely void, under the Constitution of the State of Wisconsin; and that said Act of the Legislature, approved March 7, 1857, in violation of said Constitution, and that all the acts and doings of said Common Council of said city in assessing and levying the taxes of 1857, are void and without authority of law.

And your orator alleges, upon information and belief, that after the levying of said tax, and at the proper time, the then City Treasurer of the city of Sheboygan did proceed to sell the lands of your orator heretofore set forth for the nonpayment of the said taxes so levied in the year 1857, and did sell the same for the taxes of said year 1857.

And your orator further alleges, upon information and belief, that said defendant, Francis Geele, is now the Treasurer of said city of Sheboygan, and that as such Treasurer, under the charter of said city of Sheboygan, he has authority to execute and deliver deeds of lands sold for taxes, when the time for redemption expires.

And your orator further alleges, upon information and belief, that upon the sale by the said Treasurer of the city of Sheboygan, for the lands so sold as aforesaid, the said Treasurer being the officer authorized by law, did issue certificates on sale of the lands so sold by him for said taxes of 1857, and did issue and sign certificates for the lands so sold and belonging to and owned by your orator, and the numbers of which said certificates are set forth in the list of the property above described, together with the amount of the tax, and the amount for which the same sold; and which said certificates, as your orator is informed and believes, were delivered to the defendant, the city of Sheboygan, said city of Sheboygan being the purchaser at said sales.

And your orator further alleges, upon information and belief,

that the said defendant, Francis Geele, as such Treasurer, has threatened to, and has given out, that at the proper time he will, when requested, execute and deliver to the purchasers of said premises or the holder of the certificate for the sale of said lands for the taxes of 1857, as aforesaid, deeds of conveyance of said lands so sold.

And your orator further alleges, upon information and belief, that the time for redeeming said certificates so issued on said sale for said taxes of 1857 is now about expiring, and that said defendant, Francis Geele, is ready and will execute and deliver to the holders of said certificates deeds of conveyance of said premises of your orator.

And your orator alleges that he is informed and believes, and is advised, that under the laws of the State of Wisconsin, said deeds, so executed and delivered, convey a title of said lands, prima facie, to the party to whom said deed is delivered.

And your orator alleges that said deeds will cast a cloud upon the title to said premises, and will seriously embarrass your orator in the sale and disposition of his said land, and render the same less valuable to your orator.

And your orator further shows, upon information and belief, that he is fearful that said defendant, the city of Sheboygan, and Francis Geele, the Treasurer of said city of Sheboygan, will, unless restrained by the order of this Court, proceed at once, without delay, to execute and deliver deeds of conveyance upon the said premises, unless restrained by the order or injunction of this Court, and that they threaten so to do.

Inasmuch, therefore, as your orator is remediless in the premises, except in a court of equity, where matters of this nature are properly cognizable and relievable, your orator prays the judgment of this Court that said defendants may answer upon their corporal oath the matters and things set forth in this bill of complaint; and that the said assessment and levies of taxes may be declared illegal and void, and of no form, validity, or effect, as to your orator, or as to the premises above owned by your orator; and that the said sale of the premises and land of your orator, under said taxes of the year 1857, may be declared illegal and void, and of no force, validity, or effect as to your orator; and that the said defendants and each of them, and their and each of their officers, agents, servants, and attorneys, may be perpetually enjoined from executing, acknowledging or delivering any deed or deeds of any kind or description, of said premises, or any part thereof, to any person or persons whatsoever, or from executing, acknowledging, or delivering any deed or deeds of any kind upon the certificates numbered as set forth in the schedule of property owned by your orator in the former part of this bill, or for such other or further relief as to the Court may seem meet in the premises, and agreeable to equity.

May it please your honor to grant unto your orator the writ of subpœna issuing out of and under the seal of this Honorable Court, therein and thereby commanding the said defendants, the city of Sheboygan and Francis Geele, Treasurer of the city of Sheboygan, to be and appear before this Honorable Court, then and there to answer this bill of complaint of your orator, in accordance with the rules and practice of this Court, and that an injunction may be allowed in pursuance of the prayer of this bill. And your orator will ever pray, &c.

FINCHES, LYNDE & MILLER,
Solicitors for Complainant.

WM. P. LYNDE, of counsel.

WINTHROP W. GILMAN,
By LEVI J. MERRICK, his Agent.

District of Wisconsin, *ss.*

Levi J. Merrick being duly sworn, deposes and says, that he is the agent of the above-named complainant; that he has heard read the foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein alleged upon information and belief, and as to those matters he believes them to be true.

Before me,
WALTER S. CARTER,
U. S. Court Com.

Re-sworn before me, January 2,
A. D. 1860.
J. M. MILLER, *Clerk.*

Exhibit "A."

Office of the Sheboygan Railroad Commissioners,
Sheboygan, June 23, 1856.

To the Honorable the Mayor and Common Council of the City of Sheboygan:

The undersigned has to report that in conformity with a resolution of said Commissioners, A. P. Lyman, Esq., did, on the 30th of August, 1855, subscribe $100,000 to the capital stock of the Sheboygan and Mississippi Railroad Company, for and in behalf of said city.

That he did, in conformity with a like resolution, on the 17th day of March, 1856, subscribe the further sum of $100,000 to such stock in like behalf.

That the bonds of the said city have been issued to the amount of $200,000, as follows:

$100,000 coupon bonds, 8 per cent. annual interest, due in fourteen years from the first day of August, 1856; and $100,000

of like bonds, due in fifteen years from said first day of August; and that the principal and interest is payable at the Bank of New York, in the city of New York.

Respectfully submitted:

W. W. KING, *Sec'y.*

We hereby certify that the foregoing is a true copy of a report of W. W. King, Secretary of the Sheboygan and Mississippi Railroad Company, filed in the Clerk's office, the 23d June, 1856, at four o'clock, P. M.

Sheboygan, 7th Aug., 1856.

E. FOX COOK, *Mayor.*

CHAS. ADOLPHI, *City Clerk.*

Sheboygan City, }
Clerk's Office. }

I hereby certify that the foregoing is a true copy of the records in the books of my office.

Witness my hand and official seal, this 24th Decem-
[SEAL.] ber, 1859.

CHAS. ADOLPHI, *City Clerk.*

On the same day, to wit, December 19, 1859, came the said complainant, by the said solicitor, and entered a rule for an injunction, as follows:

WINTHROP W. GILMAN
vs.
THE CITY OF SHEBOYGAN AND FRANCIS GEELE, TREASURER OF THE CITY OF SHEBOYGAN. } In Equity.

On motion of Finches, Lynde & Miller, complainant's solicitors ordered that the defendants show cause, by Thursday, the 22d day of December inst., at two o'clock in the afternoon, why an injunction should not be issued according to the prayer of the bill on file, Dec. 19, 1859.

FINCHES, LYNDE & MILLER,
Complainant's Solicitors.

Whereupon a subpœna issued as follows:

United States of America, }
District of Wisconsin. } *ss.*

The President of the United States to the city of She-
[SEAL.] boygan and Francis Geele, Treasurer of the city of Sheboygan, greeting:

You are hereby commanded, that you personally appear be-

fore the Judge of the District Court of the United States of America, for the District of Wisconsin, in our Court of Chancery in and for the District aforesaid, on the first Monday of February next ensuing, at Milwaukee, to answer to a bill of complaint, exhibited against you in our said Court, by Winthrop W. Gilman; and to do further, and receive what our said Court shall have considered in that behalf, and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the Marshal of this District, who is hereby commanded to serve the same upon the said the city of Sheboygan and Francis Geele, Treasurer of the city of Sheboygan, if to be found in his District, and due return thereof make.

Witness the Honorable Andrew G. Miller, Judge of the District Court of the United States for the District of Wisconsin, at the city of Milwaukee, in the said District, this nineteenth day of December, in the year of our Lord one thousand eight hundred and fifty nine, and of our Independence the eighty-fourth.

J. M. MILLER, *Clerk.*

FINCHES, LYNDE & MILLER, *Solicitors.*

It is ordered by our said Court that the said the city of Sheboygan and Francis Geele, Treasurer of the city of Sheboygan, the defendants aforesaid, do enter their appearance in this suit, in the Clerk's office, on or before the day and time at which this subpœna is returnable, as aforesaid, otherwise the bill filed may be taken as confessed. And it is further ordered that they show cause by Thursday, the twenty-second day of December instant, at ten o'clock in the forenoon, why an injunction should not be issued, according to the prayer of the bill on file.

And afterwards, on or before the return day of said writ, came the said Marshal, and returned said subpœna, with his return endorsed thereon, as follows to wit:

Return to Subpœna.

"Served on the within-named Francis Geele, Treasurer of the city of Sheboygan, by delivering him personally a copy of this subpœna, this 20th day of December, 1859; also served on the within-named the city of Sheboygan by delivering a copy of this subpœna on the Mayor of said city, Zebulon P. Mason, and the Clerk of said city, Charles Adolphi, this 20th day of December, A. D. 1859.

"JEHU H. LEWIS, *Marshal,*
"By A. H. EDWARDS,
"Deputy Marshal."

And afterwards, on the eighteenth day of January, A. D. 1860, the following proceedings were had, to wit:

Injunction allowed, &c.

This day the rule of this complainant for an injunction came on to be heard upon the bill, and being submitted by counsel; on consideration whereof it is ordered by the Court that an injunction be and hereby is allowed, according to the prayer of the bill, until the further order of the Court.

And injunction issued, as follows:

United States of America, } *ss.*
District of Wisconsin. }

[SEAL.] The President of the United States of America to the city of Sheboygan and Francis Geele, Treasurer of the city of Sheboygan, and to your officers, agents, servants, and attorneys, greeting:

Whereas, it has been represented to the Judge of the District Court of the United States of America for the District of Wisconsin in equity, on the part of Winthrop W. Gilman, that he has lately exhibited his bill of complaint in said Court, before the Judge thereof, against you the said city of Sheboygan and Francis Geele, Treasurer of the city of Sheboygan, defendants in said bill mentioned, to be relieved touching the matters therein complained of.

Therefore, in consideration thereof, and of the particular matters in the said bill set forth, you the said city of Sheboygan and Francis Geele, Treasurer of the city of Sheboygan, and the persons before mentioned and each and every of you, and in the penalty which may ensue, are hereby strictly charged and commanded that you and each and every of you do absolutely desist and refrain from executing, acknowledging, or delivering any deed or deeds, of any kind or description, of the premises described in the complainant's bill of complaint filed in this cause, or any part thereof, to any person or persons whatsoever, or from executing, acknowledging, or delivering any deed or deeds of any kind upon the certificates numbered as set forth in the schedule of property owned by the said complainant, mentioned in the said bill of complaint, until the further order of this Court.

This process is directed to the Marshal for the District of Wisconsin, who is hereby commanded to serve the same upon the said city of Sheboygan and Francis Geele, Treasurer of the city of Sheboygan, if found within his District, and due return thereof make without delay.

Witness, the Honorable Andrew G. Miller, Judge of the Dis-

trict Court of the United States for the District of Wisconsin, at the city of Milwaukee, in said District of Wisconsin, this 20th day of January, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States the eighty-fourth.

J. M. MILLER, *Clerk.*

FINCHES, LYNDE & MILLER, *Solicitors.*

And afterwards, to wit, on the sixth day of February, A. D. 1860, came the said Marshal, and returned said injunction, with his return endorsed thereon, as follows:

Return to Injunction.

"Served on the within-named Francis Geele, by delivering him personally a copy of this injunction, this 25th day of January, A. D. 1860; served on the within-named city of Sheboygan, by delivering personally to Charles Adolphi, Clerk of said city, a copy of this injunction, this 25th day of January, 1860; also, by delivering to Anson L. Crocker, acting Mayor of the city of Sheboygan, personally, a copy of this injunction, this 2d day of February, 1860.

"JEHU H. LEWIS, *Marshal,*
"By A. H. EDWARDS, *Deputy.*"

And afterwards, to wit, on the second day of April, A. D. 1860, came the defendant, the city of Sheboygan, by its solicitor, Mr. Hubbell, and filed its demurrer, as follows:

Demurrer.

Winthrop W. Gilman
vs.
The City of Sheboygan and Francis Geele, Treasurer of the City of Sheboygan.

District Court of the United States, Wisconsin District.

The defendant, the city of Sheboygan, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein alleged and set forth, doth demur thereto, and for cause of demurrer showeth that the said complainant hath not in and by the said bill made or stated such a cause as doth or ought to entitle him to any such discovery or relief as is thereby sought or prayed for, from or against this defendant.

Wherefore this defendant demands the judgment of this Honorable Court whether he shall be compelled to make any other or further answer to the said bill, or any of the matters and things therein contained; and prays to be hence dismissed with his reasonable costs in this behalf sustained.

And for grounds and causes of demurrer to the said bill of complaint, this defendant states, that the said several Acts of the Legislature of the State of Wisconsin in the said bill complained of as illegal and void, are in truth and in fact valid and constitutional Acts of the said Legislature, and laws of the State of Wisconsin, binding upon the said complainant.

LEVI HUBBEL,
Solicitor for the Defendant, the City of Sheboygan.

I hereby certify that I have examined the foregoing demurrer, and that, in my opinion, it is well founded in point of law.

I further certify and state that I know said demurrer is not interposed for purposes of delay.

LEVI HUBBEL,
Of Counsel.

And afterwards, to wit, on the fourth day of September, A. D. 1860, came the said complainant, by his said solicitor, and filed amendments to the bill in this cause, as follows:

Amendments.

Winthrop W. Gilman
vs.
The City of Sheboygan and Francis Geele, Treasurer of the City of Sheboygan.

U. S. Dist. Court, District of Wisconsin.

And the said complainant, by leave of the Court first had and obtained, comes and amends his said bill of complaint, as follows, to wit: By inserting immediately after the description of the said several tracts and parcels of land set forth in said bill of complaint, the following allegation:

"And your orator further shows and alleges that the value of the said real estate is at least ten thousand dollars."

Also, by inserting after the following allegation: "And your orator insists and alleges that the said tax of 1857 so levied is unjust, oppressive, illegal, and absolutely void, under the Constitution of the State of Wisconsin, and that said Act of the Legislature, approved March 7, 1857, is in violation of said Constitution, and that all the acts and doings of said Common Council of said city in assessing and levying the taxes of 1857 are void and without authority of law"—the following, to wit:

"And your orator insists and alleges that the said Act of the Legislature of the State of Wisconsin, approved March 7, 1857, is in violation of the Constitution of the United States in this; that said Act tends to and does impair the obligations of contract, that the said bonds or a large portion of them were issued under the provisions of the first recited Act, passed the seventeenth day of January, A. D. 1854, by which said Act the tax to be

levied for the payment of said bonds, so issued in pursuance of said Act, was to be levied upon all the taxable property of the said city of Sheboygan; and your orator, upon information and belief, alleges that said bonds were issued upon the faith that all the taxable property of said city was to be taxed for the payment of the said bonds, and the interest accruing thereon; and that the Legislature of the State of Wisconsin had no power or authority, after issuing said bonds under and in pursuance of the provisions of said Act, to pass an Act by which the tax for the payment of said bonds should be levied exclusively upon the real estate of said city; and your orator insists and charges that the said Act of the Legislature of the State of Wisconsin, approved March 7, 1857, in so far as it provides that a tax shall be levied only upon the real estate of said city, does impair the obligation of the contract upon which and in pursuance of which the said bonds or a portion of them were issued; and that the tax of 1857 being levied for the payment of the interest upon said bonds, upon the real estate only, and not upon all the taxable property of the city, it is therefore illegal and void.

FINCHES, LYNDE & MILLER,
Solicitors for Complainant.

Stipulation.

And afterwards, to wit, on the sixth day of September, came the parties, by their respective attorneys, and filed their stipulation in writing, as follows:

W. W. Gilman
vs.
The City of Sheboygan, *et al.* } United States District Court, Wisconsin District.

It is hereby agreed and stipulated that the demurrer heretofore filed in this action shall stand, and be considered as a demurrer to the amended bill of the complainant in said action, and that the same be set down for argument on the first Monday in October, 1860.

Dated Sept. 5, 1860.

LEVI HUBBEL,
Solicitor for Defendants.

FINCHES, LYNDE & MILLER,
Complainant's Solicitors.

And now at this same term, to wit, October Special Term, 1860, and on the 16th day of said term, to wit, on the fifth day of November, A. D. 1860, the following proceedings were had, to wit:

Decree.

Winthrop W. Gilman
vs.
The City of Sheboygan and Francis Geele, Treasurer of the City of Sheboygan. } In Equity.

This day came the parties, by their counsel, and the demurrer to this bill having been argued by the counsel of the defendants, on consideration whereof it is ordered, adjudged, and decreed by the Court that the said demurrer be sustained, and that this bill be and hereby is dismissed; and further, that the complainant pay the costs to be taxed, and in default thereof that an execution be issued against him for the same.

A. G. MILLER.

Decree signed, recorded, and enrolled, November 5th, A. D. 1860.

J. M. MILLER, *Clerk.*

And afterwards, to wit, on the twenty-first day of said term, to wit, on the twelfth day of November, A. D. 1860, the following proceedings were had, to wit:

Appeal.

Winthrop W. Gilman
vs.
The City of Sheboygan and Francis Geele, Treasurer of the City of Sheboygan. } In Equity.

This day came the complainant, by his counsel, and prayed an appeal to the Supreme Court of the United States, and filed the bond of Levi J. Merrick and William H. Merrick, in the penalty of five hundred dollars, conditioned to prosecute said appeal to effect, and pay all costs and damages that may be awarded against the said complainant; which is approved. Whereupon it is ordered by the Court that the said appeal be and is hereby allowed, and all further proceedings be stayed.

Appeal Bond.

Which bond is as follows:

Know all men by these presents, that we, Levi J. Merrick and William H. Merrick, are held and firmly bound unto the city of Sheboygan and Francis Geele, Treasurer of the city of Sheboygan, in the penal sum of five hundred dollars, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 12th day of November, A. D. 1860.

Whereas, an appeal has been allowed by the District Court of the United States for the District of Wisconsin, from a decree rendered in said Court on the fifth day of November, 1860, in a certain cause therein pending, wherein Winthrop W. Gilman was complainant, and the said city of Sheboygan and Francis Geele, Treasurer of the city of Sheboygan, are defendants, to the Supreme Court of the United States: now the condition of this obligation is such that if the said Winthrop W. Gilman shall prosecute said appeal to effect, and pay all costs and damages that may be awarded against him, and abide the order of the Court therein, then this obligation shall be void; otherwise of full force and virtue.

LEVI J. MERRICK, [SEAL.]
W. H. MERRICK. [SEAL.]

In presence of
B. K. MILLER.

District of Wisconsin, *ss.*

Levi J. Merrick and William H. Merrick being each severally sworn, doth say, that he is worth the sum of five hundred dollars, over and above all debts and liabilities.

LEVI J. MERRICK,
W. H. MERRICK.

Subscribed and sworn to before me,
this 12th day of November, 1860.
WALTER S. CARTER,
U. S. Commissioner.

November 12, 1860, approved.

A. G. MILLER,
Judge.

United States of America, } *ss.*
District of Wisconsin. }

I, John M. Miller, Clerk of the District Court of the United States for the District of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, now on file, and remaining of record in my office, being a full and complete exemplification of the record and proceedings in the suit of Winthrop W. Gilman against the city of Sheboygan *et al.*

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said Court, at the city [SEAL.] of Milwaukee, in the said District of Wisconsin, this seventeenth day of November, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the said United States the eighty-fifth.

J. M. MILLER, *Clerk.*

United States of America to the City of Sheboygan and Francis Geele, Treasurer of the City of Sheboygan, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of Wisconsin, wherein Winthrop W. Gilman is appellant and you are appellee, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty, and of our Independence the eighty-fifth.

A. G. MILLER,
Judge of the U. S. for the District of Wisconsin.

[Endorsed:]

Served on the within-named City of Sheboygan and Francis Geele, Treasurer of the City of Sheboygan, by delivering a copy of this citation personally to Levi Hubbel, Esq., their attorney, this 14th day of November, 1860.

Service,	$2 00
Copy,	20
Travel,	06
	$2 26

J. H. LEWIS, *Marshal*,
By J. HENRY, *Deputy*.

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Supreme Court.

UNITED STATES OF AMERICA

WINTHROP W. GILMAN
Appellant.

versus

THE CITY OF SHEBOYGAN,
et al.
Appellees.

In Chancery.

Appellant's Brief and Points.

MERRICK & HILL,
Attorneys for Appellant.

L. J. MERRICK,
Of Counsel.

Daily News Steam Print

SUPREME COURT

OF THE

UNITED STATES OF AMERICA.

WINTHROP W. GILMAN
Appellant.

versus

THE CITY OF SHEBOYGAN, *et al.*
Appellees.

In Chancery.

Appeal from the District Court of the United States for the District of Wisconsin.

APPELLANT'S BRIEF AND POINTS.

STATEMENT OF THE CASE.

This appeal is taken from a final decree rendered in the Court below, in November, 1860, by which the appellant's bill of complaint was dismissed with costs, &c.

The gross injustice and wrong to which the appellant has been subjected by hasty, unwarranted and unauthorized legislation, compels him to apply for relief. He is the owner of about 29-40 of all the real estate situate within the corporate limits of the City of Sheboygan, in the State of Wisconsin. A few individuals project a Railroad leading from that city westward, through Fond du Lac, to the Mississippi river, a distance of 100 miles; they are incorporated and become a joint stock company, under the laws of Wisconsin; to further their ends, they obtained acts of the legislature of said State, purporting to authorize the City of Sheboygan to become a stock-holder in said Railroad Company to an amount not exceeding $200,000.

To provide for the payment of such a sum as said City might see fit to subscribe, it is enacted that said City may levy a tax exclusively upon the real estate within its corporate limits, thereby subjecting the appellant to the payment of 29-40 of said subscription without his knowledge or consent.

Under and pursuant to said acts the City of Sheboygan did in the year 1857, levy upon such real estate exclusively for the purpose of paying its subscription to the capital stock of such Railroad Company, a tax of six cents upon the dollar of the total valuation of such real estate.

This suit was brought to avoid this so called tax and to test the validity of the acts under which it was levied.

To prevent such an encroachment upon sacred and inalienable rights; to explode such a Utopian theory of taxation; to preserve property from the vortex of reckless speculation, and to resist the full realization of a deeply laid scheme of extortion, we present the following

POINTS.

I.

We here insist that it is not competent for the Legislature to invade the sanctuary of private right, for purposes no way connected with public exigencies, or to transfer the property of one citi-

zen or person without his consent either with or without just compensation, to another.

True, it appears from the record that the grevious burthen under which the appellant groans, purports to be a *tax*. All the authorities agree that taxes are to be levied only for public purposes.

If the Legislature of the State of Wisconsin has the power to compel the appellant to furnish the means wherewith the City of Sheboygan may become a stock holder in a Railroad corporation, by filching from him his real estate under the guise of taxation, with equal propriety might that same Legislature authorize the City of Sheboygan to become a stock-holder in a bank, a manufacturing or a steamboat company, or any other private enterprise requiring the aggregation of capital, by seizing directly upon the appellant's property and transferring it immediately to such corporations, without his consent, and without compensation.

2 Story's Const. § 947
Terrett vs. Taylor, 9 Cranch, 43.
Willimsen vs. Leland, 2 Peters, 654.
Goshen vs. Stonington, 4 Conn, 225, Hosmer J.
Borrman vs. Middleton, 1 Bay, 252.
Bonaparte vs. Camden and Amboy R. R. Co., 1 Baldw, C. C. R. 223.

The genius and spirit of our institutions, the nature and character of our social rolations and the fundamental principles of our social compact forbid the accomplishment of that *indirectly* which cannot be done directly.

3 Story on Const., § 1385, p 256, 7.
Fletcher vs. Peck, 6 Cranch, 87, 138.
1 Kent's Com, 388 ditto 38.
New Jersey vs. Wilson, 7 Cranch, 164.
Taylor vs. Porter, 4 Hill, N. Y., 146.

By the organic law of the State of Wisconsin, it is provided, "That private property shall not be taken for public use, &c."

The decisions of the Federal and State Courts under such provisions, are too numerous and too well known to require further reference.

If private property cannot be taken for public use without just compensation, then *a fortiori* it cannot be taken for private use

The acts of the Legislature of the State of Wisconsin, under which the City of Sheboygan is about to take appellants real estate and convert it into Railroad stock, are clearly subversive of absolute rights, and therefore void.

See the acts printed at length in the appendix hereto, together with extracts from the Constitution of Wisconsin.

It may be laid down as an axiom that Government, according to the law of its being, has the power to protect itself and carry out its own ends fully and completely.

By its organic law the State of Wisconsin is expressly prohibited from contracting any debt for works of interal improvement and from being a party in carrying on such works.

The acts of the Legislature of that State now under consideration, if they do not directly contravene this restriction, are evasions or violations of its spirit.

If the whole commonwealth cannot aid in the construction of a railroad, how can one of its municipalities or subdivisions with propriety do so? If the State cannot itself become a stockholder in a Railroad Company, from what does it derive its power to authorize one of its cities to do acts in contravention of the settled policy of the Government? Can a Railroad, canal or other work of internal improvement in Wisconsin be considered a *public* enterprise?

It was evidently the intention of the framers of the State Constitution, to relieve the Government in all its departments from such burthens, as internal improvements, by leaving them to be developed, by private capital and enterprise.

A Railroad is truly for the public accommodation, its construction confers a public benefit, and land taken for its right of way, station houses &c., is taken for the public use. In authorizing a private corporation, or even an individual to appropriate private

property in furtherance of a public benefit, the Legislature exercises the right of eminent domain; but in Wisconsin the Legislature cannot exercise its right of taxation in favor of a Railroad corporation, or for any other work of internal improvement, for the very moment it does so the State becomes a party to that work.

If we concede that a Railroad is a public exigency, then since the Legislature has incorporated a company and conferred franchises upon it, it does not follow that the Legislature has power to furnish the means with which that company may construct its road or any portion of it, for whenever the Legislature essays to provide the resources, it makes the State a party to the work of internal improvement.

A Railroad is one thing, a Railroad Company is another; the one is a public benefit, while the other is in all its aspects a private concern; strictly speaking it is a private corporation, empowered to acquire and hold real and personal property for the purpose of furnishing an accommodation to the public for private gain; as is a bank or a turnpike company, &c, &c.

Its charter is a contract. The law of its existence is granted upon the condition that it will furnish, equip and operate according to law, a Railroad between certain *termini*, through given *stadia*. All the property of the company is private and is taxed as such, and its members are taxed for the amount of stock they respectively own.

How then can any power shut of absolute tyranny compel an individual to furnish the means for carrying out these private ends? Plainly stated the proposition may be reduced to this:

Can the Legislature authorize A to compel B to invest his property in Railroad stock and furnish the means for building the road under the disguise of a tax?

Why not enact at once that appellant do invest $145,000 in the Sheboygan and Mississippi R. R. The proposition needs but to be stated to show its absurdity.

Soens *et al.* vs. City of Racine, 10 Wis., 279, 281.

Conceding, for the sake of argument, that the Legislature of Wisconsin is omnipotent, and that the acts in question otherwise involve a proper and legitimate excercise of the taxing power, then,

II.

We contend that both the acts of 1856 and 1857 are in violation of the letter and spirit of the constitutional provision;

The rule of taxation shall be uniform, and taxes shall be levied upon such property as the Legislature shall prescribe.

§ 1, Art. VIII, Constitution of Wisconsin.

1. By leaving it to the different municipal sub-divisions of the State, to subscribe as little or as much as they please, not exceeding a sum fixed, there may arise as many different rules of taxation for this specific Railroad, as there are different cities and towns.

2. It has been decided by the Supreme Court of the State of Wisconsin, that the above provision of the State Constitution requires, as a rule in levying taxes, *that they must be imposed alike upon all the taxable property throughout the territorial limits, of the State or municipality, within or for which the tax is to be raised*, and where the Legislature prescribed a different rule, the act is a departure from the Constitution, and therefore void.

Knowlton vs. Supervisors of Rock County.
9 Wisconsin, 410.

A case precisely in point, (or would be if the acts of 1856 and 1857, in question, were for the support of government instead of Railroad,) inasmuch as the tax is to be and was levied upon real estate exclusively, within the corporate limits of the City of Sheboygan, under and pursuant to said enactments.

Hence, the imposition complained of is clearly illegal and should be set aside.

We therefore ask, that the decree of the Court below appealed from be reversed; and that a decree be given in conformity with the prayer of appellant's bill or for such other and further order decree in the premises as to this Court shall seem meet according to Equity and good conscience.

All which is respectfully submitted.

MERRICK & HILL,
Attorneys for Appellant.

L. J. MERRICK,
Of Counsel.

APPENDIX.

CHAPTER I.

An Act to authorize the City of Sheboygan to aid in the construction of a Railroad.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Section 1. Asahel P. Lyman, John S. Harvey, William W. King, Henry Otten and Thomas Fagan, are hereby appointed a board of commissioners, for the purpose of aiding in the construction of a railroad, authorized to be made from the city of Sheboygan, westwardly by the way of Fond du Lac, to the Mississippi River.

Sec. 2. Said commissioners shall, previous to the tra saction of any other business, elect one of their number president, and one treasurer; and shall also appoint a secretary. The president, when present, shall preside at all meetings of the board for the transaction of business; and the secretary shall keep a record of all doings of said board. All meetings of said commissioners shall be at Sheboygan, at such time and place as shall be designated by a majority of them.

Sec. 3, The said commissioners are hereby authorized to borrow one hundred thousand dollars, upon the credit of the city of Sheboygan, for twenty years or less, in such sums as they may deem proper, at a rate of interest not exceeding ten per cent. per annum, payable annually in the city of New York, for the purpose of investing the same in the capital stock of a railroad com-

pany authorized to construct a railroad from the City of Sheboygan, westwardly by way of Fond du Lac, to the Mississippi River, and to issue therefor the bonds of the City of Sheboygan, as hereinafter mentioned ; and in case the said money, or any part thereof, shall not be so borrowed to subscribe for so many shares of said capital stock, of said railroad company, that the amount of the same, at their par value, shall be equal to one hundred thousand dollars, and to pay for the same in the bonds of the said city payable as above specified. In lieu of investing the said sum, or any part thereof, in the capital stock of said railroad company the said board of commissioners are hereby authorized to loan the credit of the said city, to the said company, to the amount of one hundred thousand dollars, for a length of time not exceeding twenty years, and at a rate of interest not exceeding ten per cent. per annum, and to receive the convertible bonds of said company to secure the said city, and such other security as shall be agreed upon and approved by the said board of commissioners.

Sec. 4. The shares of stock in said railroad company, or the bonds and other securities of said company, thus taken by said city, and all dividends and interests arising from the same are hereby pledged for the payment of the principal and interest of said city bonds : *Provided, however*, That the board of commissioners may sell such shares of stock, or such bonds and other securities of said company, but the proceeds thereof, and interest, shall still be pledged to pay the interest and principal of said city bonds.

Sec. 5. The city council, of the City of Sheboygan, shall annually levy a tax upon all the taxable property of said city, sufficient to pay the interest of such bonds, after deducting the dividends received by said city of said shares of stock, or the interest on said bonds of said company, and in any year when said bonds shall become due, the said city council shall levy a tax as aforesaid, sufficient to pay said bonds so becoming due, after deducting any and all sums received by said city on the sale of shares of stock, or of the bonds of said company, or dividends not expended in the payment of interest.

Sec. 6. The said board of commissioners shall annually appoint one railroad commissioner, who shall attend the annual or special meetings of the stockholders of said railroad company for the election of directors thereof, or for transacting any other business, and shall be entitled to cast one vote for every share of stock which said city shall hold in said railroad company, and in case of his absence, or inability to attend, to appoint in writing under their hands some other person who shall have the same power.

Sec. 7. No bonds shall be issued in pursuance of the provisions of this act, nor shall the credit of the city be loaned to said railroad company, until a majority of the legal voters of said city, voting upon said question, shall vote in favor of the same at an election, called by the said city council for that purpose. At such election those voting in favor, shall vote a ballot, with the words inscribed thereon, "For the Railroad," and those voting against shall vote a ballot, with the words inscribed thereon, "Against the Railroad." The city council shall give at least ten days' notice of the time and place of holding said election, by publishing the same in all the newspapers printed and published in said city, and this act shall be published in connection with such notice. Said election shall be conducted and the returns thereof made and canvassed in the same manner as an election for city officers in said city.

Sec. 8. The said bonds shall be signed before issued by the president and secretary of said board of commissioners, and countersigned by the mayor of said city of Sheboygan, who shall keep a correct register of all bonds so countersigned by him. The said bonds, when signed and countersigned as aforesaid, shall be, in the hands of any bona fide holder of the same, full and complete evidence, both in law and equity, to establish the indebtedness of said city of Sheboygan, according to the tenor and effect of said bonds: *Provided*, That no bonds shall be issued except by order of a majority of said commissions, at a meeting of said board, and which order shall be entered upon the records of their proceedings.

Sec. 9. The said city council shall have power, at any future time, to submit the question of raising the further sum of one hundred thousand dollars upon the credit of said city of Sheboygan, in manner and form as hereinbefore provided, and if a majority of the legal voters of said city, voting upon said question, shall vote in favor of the same, then the said board of commissioners shall have power to raise, upon the credit of the said city of Sheboygan, the further sum of $100,000, and expend the same in manner and form as provided in the sections of this act.

Sec 10. All contracts entered into by said commissioners, shall be made in the name of the Sheboygan railroad commissioners, shall be signed by the president and secretaty of said board, and all contracts shall be made by consent of a majority of said board, or by some person duly authorized by a vote of the majority of said board, at a meeting of the same.

Sec. 11. Whenever any vacancy shall occur in said board of commissioners, by resignation, death, or removal from said city of Sheboygan, of any of said commissioners, it shall be filled by an election by the remainder of said board, of some freeholder of said city ; and a majorisy of said commissioners shall constitute a board for the transaction of any business authorized to be done by said board.

Sec. 12. It shall be the duty of said board of commissioners, on or before the first Tuesday of April, in each year, to render a specific statement of their doings to the common council of the said city of Sheboygan, verified by the oath of the president of said board ; and said statement shall also show the sum of money that will become due for interest or principal, or both, upon the bonds of said city, issued by them as aforesaid, for the ensuing year, and the place where the same is payable, and what sum of money so to become due, will be required to be raised by a tax upon the taxable property of said city.

Sec. 13. The act entitled, an act to authorize the city of Sheboygan to aid in the construction of a certain railroad, approved April second, one thousand eight hundred and fifty-three, is hereby repealed,

Sec. 14. This act shall take effect, and be in force, from and after its passage.

Approved, January 17, 1854.

CHAPTER CCLXVII.

An Act to authorize the city of Sheboygan to aid in the construction of the "Sheboygan and Mississippi Railroad."

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Section 1. The common council of the city of Sheboygan are hereby authorized to subscribe in behalf of the city of Sheboygan, to capital stock of the "Sheboygan and Mississippi Railroad Company," incorporated by act of the legislature of this state, approved March 8, 1852, to the amount of fifty thousand dollars; *Provided, however,* That if in the opinion of said common council, the interest of said city should hereafter require it, the said common council shall have authority to increase its subscription to the said stock, from time to time, until the aggregate amount of the subscriptions shall equal the sum of one hundred thousand dollars.

Sec. 2. In order to provide for the payment of the instalments on the stock subscribed as aforesaid, the said common council shall levy annually, after such subscription shall have been made, a tax on all the real estate within the incorporated limits of said city, not exceeding the sum of twenty-five thousand dollars in any one year, until the whole amount of such subscription shall be paid; such tax shall be levied and collected, at the same time and in the same manner that the other city taxes on real estate, are levied and collected in said city.

Sec. 3. All taxes levied and collected under the provisions of this act, shall be kept as a seperate fund for the payment of the installments on the stock subscribed by said common council, as

herein authorized, and all the proceeds of such taxes, coming into the hands of the said city treasurer, shall be paid over to to the said "Sheboygan and Mississippi railroad company," as the said common council shall direct.

Sec. 4. Every person who shall pay any tax or taxes levied and collected under the provisions of this act, shall be entitled to receive from the treasurer of said city, a receipt therefor, specifying the sum paid, and for what object, and such receipt or receipts shall, upon their surrender to the proper officer of said city, entitle the holder or asignee thereof to a transfer and asignment from said city of a share or shares of such capital stock subscribed as aforesaid, equal in amount to the amount of such receipts.

Sec. 5. This act shall take effect and be in force from and after its passage.

Approved March 28, 1856.

CHAPTER CCCLXXVI.

An Act to amend an act to incorporate the City of Sheboygan and the several acts amendatory thereof.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Section 1. All taxes hereafter levied by the common council of the city of Sheboygan, for the [amount] (payment) of principal or interest of any bonds issued or to be issued by said city, to aid in the construction of any railroad, plankroad or for the improvement of the harbor at the mouth of the Sheboygan river, shall be levied by said council on the real estate of said city exclusively.

Sec. 2. All acts or parts of acts that conflict with the provisions of this act, are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved March 7, 1857.

☞ Local Laws, Wisconsin, 1854, p. 1; 1856, p. 519, and 1857, p. 1001.

CONSTITUTION OF WISCONSIN.

ARTICLE IX.

Sec. 10. The State shall never contract any debt for internal improvements, or be a party in carrying on such works; * *

ARTICLE XI.

Sec. 2. No Municipal Corporation shall take private property for public use against the consent of the owner, without the necessity thereof being first established by a verdict of a jury.

Sec. 3. It shall be the duty of the Legislature, and they are hereby empowered to provide for the organization of cities and incorporated villages, and to RESTRICT their power of taxation, assessments, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and taxation, and in contracting debts by such municipal corporations.

☞ The Court will please observe, that the act of 1854, authorizes the loan of credit, or a subscription of and by the City of Sheboygan, to the amount of $100,000, to the aid of said Railroad, and that while the act of 1856 authorizes a direct subscription of another $100,000 to the Capital Stock of said Railroad, it does not repeal the former act, therefore, the $200,000 in bonds, were issued by said City, under, and as the appellees claim, were authorized by the two acts of 1854 and 1856, while the tax complained of was levied under the act of 1857, amendatory of the former acts; hence, if the act of 1854 is valid and the other acts invalid, either or both, the tax should be declared void.

M. & H.

UNITED STATES OF AMERICA.

In Supreme Court.

W. W. GILMAN,
Appellant,
versus
THE CITY OF SHEBOYGAN AND FRANCIS GELEE, Treasurer, &c.,
Respondents.

Points and Authorities of the Respondents.

LEVI HUBBELL, Solicitor,
T. O. HOWE,
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MILWAUKEE:
STARR & SON, PRINTERS, 212 and 214 EAST WATER STREET.

1862.

UNITED STATES OF AMERICA.

1

In Supreme Court.

W. W. GILMAN,
Appellant,
versus
THE CITY OF SHEBOYGAN AND FRANCIS GELEE, Treasurer, &c.,
Respondents.

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POINTS AND AUTHORITIES OF THE RESPONDENTS.

The Legislature of the State of Wisconsin, by an act approved January 17, 1855, (Private and Local Laws of 1854, Chap. 1, p. 1,) authorized the city of Sheboygan, to loan its credit to aid in the construction of a Railroad, and to issue its bonds for that purpose.

Section 3 declares, "The City Council of the city of Sheboygan, shall annually levy a tax upon *all the taxable property* of said city, sufficient to pay the interest upon such Bonds, &c."

Section 7 declares, "No bonds shall be issued in pursuance of the provisions of this act, nor shall the credit of the city be 3
loaned to said Railroad Company, until a majority of the legal voters of said city, voting upon said question, *shall vote in favor of the same*, at an election called by the said city council for that purpose."

By an act, approved February 16, 1855, (Private and Local Laws of 1855, Ch. 55, p. 84,) the said city was authorized to loan its credit and to issue its bonds to the amount of twenty thousand dollars, to aid in the improvement of the Harbor of the
4 city; and, by Sec. 6 of said act, it was "made the duty of the Common Council of the city of Sheboygan to levy an annual tax upon *all the taxable property* within the corporate limits of said city, to be collected in cash, in the same manner as other taxes are collected, sufficient to pay the annual interest upon said sum of twenty thousand dollars."

No provision was made, by this act, for submitting the question of the loan, to a vote of the people.

By an act, approved March 28, 1856, (Private and Local Laws of 1856, Ch. 267, p. 517,) the Common Council of said city was anthorized to subscribe, in behalf of said city, to the capital stock of the Sheboygan & Mississippi Railroad Company, in its
5 discretion, to a sum not exceeding one hundred thousand dollars.

Section 2 declares, "In order to provide for the payment of the instalments on the stock subscribed as aforesaid, the said Common Council shall levy annually, after such subscription shall have been made, a tax *on all the real estate* within the incorporated limits of said city, not exceeding the sum of twenty five thousand dollars in any one year, until the whole amount of such subscription shall be paid."

No provision is made, by this act, for referring the question to a vote of the people.

By an act approved March 7, 1857, (Private and Local Laws of 1857, Ch. 376, p. 1,001,) it is provided that, "All taxes hereafter levied by the Common Council of the city of Sheboygan,
6 for the payment of principal or interest of any bonds issued, or to be issued by said city, to aid in the construction of any Railroad, Plank Road, or for the improvement of the Harbor at the mouth of Sheboygan River, *shall be levied by said Council on the real estate of said city, exclusively;*" and all acts and parts of acts in conflict with this provision, are repealed.

The taxes complained of, were levied under and in conformity to the provisions of the last act.

The Appellant, in his original bill of complaint, alleges that the act of March 4, 1857, is allegal and void, under the constitution of the state of Wisconsin, for the reason that it provides for a tax upon real estate only. In his amended bill, he alleges that said act is illegal and void under the constitution of the United States, for the reason that it impairs the obligation of a contract, and hence that the tax, levied on his lots in the city of Sheboygan, in pursuance of said act, is illegal and void. 7

The bill prays a perpetual injunction against the Respondents, restraining them from issuing any deed, under any sale of the Appellant's lots, made in pursuance of said act.

I.

We insist that under the constitution of the state of Wisconsin, the act of 4th March 1857, is valid. 8

Section 1, of article 8 of the constitution of Wisconsin, is as follows :

"The rule of taxation shall be uniform, and taxes shall be levied upon such property as the Legislature shall prescribe."

No question has been made of the power of the Legislature to authorise local taxation for local purposes, or the creation of the debts, or the issue of the bonds in question. But it is contended, that every tax, for every purpose, must be levied upon all property of all descriptions, within the limits embraced by the tax-law. Were the last clause of the provision omitted, such a construction might be plausible. But taxes are to be "levied upon *such property* as the Legislature *shall prescribe.*" This *implies* a power in the Legislature to designate some classes, or species of property, which shall be embraced, and others which shall not be embraced in any required tax-law. And if this discretion is vested in the Legislature, its reasonable exercise must be unquestionable. 9

We contend that, so long as entire classes of property—that is, all of the same kind or description—shall be included or excluded, and so long as the same mode of assessment or valuation is adopted, "the rule of taxation" *is* "uniform."

10 This view has been adopted by the Legislature, and never disputed by the courts of this state. Ever since the state was organised, laws have existed exempting from taxation various and valuable classes of both real and personal property.

See Revised Statutes of Wis., 1859, *Chap.* 18, *Sec.* 4.

Now the act of March 4, 1857, (the act in question,) requires "all taxes" to be levied for the specified local purposes, upon "the real estate of said city exclusively." This means clearly, all the real estate within the corporate limits of the city of Sheboygan; and we maintain, that having included *all* the real estate of the city, the inclusion or exclusion of personal property, was a a matter of discretion with the Legislature, under the constitutional provision above cited.

11 We do not however rest on this provision solely. Section 3 of article 9 of the constitution, provides as follows:

"It shall be the duty of the Legislature, and they are hereby empowered, to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments and taxation, and in contracting debts by such municipal corporations."

This provision is embraced in a separate article, subsequent to that requiring the rule of taxation to be uniform; and, no doubt, the powers conferred by it, may be exercised even in derogation

12 of the former article. If, therefore, the act of 7th of March, 1857, must be construed as a departure from the rule of uniformity, required for all the general taxes of the State, it is still valid.

II.

To make out his *second point*, the violation of a vested right, or contract, the appellant must first show that there was a contract. By whom then, and between what parties, was the contract made? 13

1 Was it made by the Legislature, with the city of Sheboygan? The city of Sheboygan is a creature of the Legislature, subject at all times to be controlled, regulated or abrogated by it.

Aspinwall, et. al. vs Commissioners of Co. of Daviess, 22 Howard 377.

The loan of the city credit, and the imposition and collection of taxes to pay the debt thereby created, were public acts. Taxation is always a public act; an exercise of the sovereign power. No Legislature will be *presumed* to have bartered away this high prerogative, even to private persons or corporations. The law will not *imply* such an intent.

Providence Bank vs. Billings, 4 Peters. 561.
Knoop vs. The Pequa Bank, 16 Howard 369. 14
Knowlton vs. Super. of Rock Co., 9 Wisconsin 448.

But, in the nature of things, the Legislature cannot enter into a contract with a municipal corporation, in respect to the discharge of its public duties. There is no party capable of contracting with it; it would be a contract with itself. It would be against public policy. Between such parties, there could be no reciprocity of interest or of consideration.

Angell and Ames on Corporations, Section 31.
Aspinwall vs. Commissioners &c., 22 Howard 377, and 15
cases cited by Nelson J.

Upon general principles, such a contract would be nugatory or illegal.

But, in the present case, we need not resort to general principles. As we have seen, the Constitution of Wisconsin expressly vests in the Legislature, the power "to provide for the organization of cities and incorporated villages," and to "*restrain* their
16 power," in various ways.

One Legislature cannot inhibit a subsequent one, and much less, all subsequent ones, from exercising this constitutional power, as the public interests or public policy may require. Each successive Legislature is charged with a like duty, "to prevent abuses in assessments and taxation, and in contracting debts, by such municipal corporations."

The act in question may have been a means resorted to, for these constitutional purposes. Authority had been given to this city, by successive legislatures, to incur debts, at discretion, and impose taxes for their payment; perhaps, at the instigation of the holders of real estate, whose property was to be chiefly, if not
17 solely, benefitted by the proposed Railroad and Harbor. The change of burden, reqnired by the act of March 7, 1857, must be presumed to have *been designed* "to restrain the power of taxation," or "to prevent abuses in contracting debts;" and, if so, it was clearly within the power of the Legislature.

2. Was the contract made between the Legislature and "the legal voters of said city voting upon said question?"

We need not ask, could the "legal voters," an undefined body, make a contract protected by the Federal Constitution?

The bill of complaint contains no allegation that the appellant was a "legal voter," or that he voted. It shows that he is a citizen of the State of New York; and the presumption is, that he took no part in the proceedings.

18 The action of the voters was not essential to the validity of the law, authorizing the city to incur the debt and levy the tax in question. The acts of 1855 and 1856, were passed without such a vote. The right to vote was a privilege gratuitously conferred.

Beers vs. State of Arkansas, 20 Howard 529.

How can this gratuity ripen into a "vested right?" Or, the exercise of such a privilege become the consideration of a contract? Shall we say, because the tax-payers voted that the Legislature might establish a law, therefore, there is an *implied* contract, that the Legislature will never change such law? The Legislature might repeal the charter of the city, or might repeal the law imposing the tax, to pay the city bonds or interest, without impairing the obligation of any contract with its inhabitants or tax-payers. And if so, why not repeal a part of such law, or modify its provisions?

3. Was a contract entered into with the Appellant? If the Appellant were a holder of bonds, issued under the act of 1854, having purchased them for value, and relying on the provision, that a tax should be levied on "all the taxable property" of the city, he might, in case of default made by the city in the payment of principal or interest due upon such bonds, insist upon a contract right to have all the property of the city taxed for his benefit. But the Appellant claims simply as a tax-payer. If the Legislature could not contract with all the tax-payers, to abjure its constitutional obligations, or ignore its public duties, much less could it do so with one.

III.

Inasmuch as the act of 1854 discloses *no intention* on the part of the Legislature to make the contract claimed by the Appellant, and as we believe, the Legislature had *no power* to make such a contract, and that the facts of the case do not warrant *the implication* of any contract whatever, either with the city, its tax-payers or the Appellant, it is not deemed necessary to inquire, whether the "obligation" of any contract has been, or is likely *to be* "*impaired*" by the act of 1857, or the proceedings of the Respondents under it.

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